

### § 820.3

words in the masculine gender also include the feminine and vice versa, as the case may require.

[58 FR 43692, Aug. 17, 1993, as amended at 71 FR 68732, Nov. 28, 2006; 72 FR 31921, June 8, 2007]

#### § 820.3 Separation of functions.

(a) *Separation of functions.* After a respondent requests an on-the-record adjudication of an assessment of a civil penalty contained in a Final Notice of Violation, no person shall participate in a decision-making function in an enforcement proceeding if he has been, is or will be responsible for an investigative or prosecutorial function related to that proceeding or if he reports to the person responsible for the investigative or prosecutorial function.

(b) *Director.* The Director shall be responsible for the investigation and prosecution of violations of the DOE Nuclear Safety Requirements. After the request for an enforcement adjudication, the Director shall not discuss *ex parte* the merits of the proceeding with a DOE Official or any person likely to advise the DOE Official in the decision of the proceeding.

(c) *Presiding Officer.* A Presiding Officer shall perform no duties inconsistent with his responsibilities as a Presiding Officer, and will not be responsible to or subject to the supervision or direction of any officer or employee engaged in the performance of an investigative or prosecutorial function. The Presiding Officer may not consult any person other than a member of his staff or a special assistant on any fact at issue unless on notice and opportunity for all parties to participate, except as required for the disposition of *ex parte* matters as authorized by law.

#### § 820.4 Conflict of interest.

A DOE Official may not perform functions provided for in this part regarding any matter in which he has a financial interest or has any relationship that would make it inappropriate for him to act. A DOE Official shall withdraw at any time from any action in which he deems himself disqualified or unable to act for any reason. Any interested person may at any time request the General Counsel to disqualify

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a DOE Official or request that the General Counsel disqualify himself. In the case of an enforcement adjudication, a motion to disqualify shall be made to the Presiding Officer. The request shall be supported by affidavits setting forth the grounds for disqualification of the DOE Official. A decision shall be made as soon as practicable and information may be requested from any person concerning the matter. If a DOE Official is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in this section shall replace him.

#### § 820.5 Service.

(a) *General rule.* Any document filed with the Docketing Clerk must be served on the addressee of the document and shall not be considered filed until service is complete and unless accompanied by proof of service; provided that the filing with the Docketing Clerk of any document addressed to the DOE Official shall be considered service on the DOE Official.

(b) *Service in an Enforcement Adjudication.* Any document filed in an enforcement adjudication must be served on all other participants in the adjudication.

(c) *Who may be served.* Any paper required to be served upon a person shall be served upon him or upon the representative designated by him or by law to receive service of papers. When an attorney has entered an appearance on behalf of a person, service must be made upon the attorney of record.

(d) *How service may be made.* Service may be made by personal delivery, by first class, certified or registered mail or as otherwise authorized or required by the DOE Official. The DOE Official may require service by express mail.

(e) *When service is complete.* Service upon a person is complete:

(1) By personal delivery, on handing the paper to the individual, or leaving it at his office with his clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place therein or, if the office is closed or the person to be served has no office, leaving it at his usual place of residence with some person of suitable age and discretion then residing there;

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(2) By mail, on deposit in the United States mail, properly stamped and addressed; or

(3) By any other means authorized or required by the DOE Official.

(f) *Proof of service.* Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, and may be made by:

(1) Written acknowledgement of the person served or his counsel;

(2) The certificate of counsel if he has made the service;

(3) The affidavit of the person making the service; or

(4) Any other means authorized or required by the DOE Official.

(g) *Deemed service.* If a document is deemed filed under this part, then the service requirements shall be deemed satisfied when the document is deemed filed.

### § 820.6 Computation and extension of time.

(a) *Computation.* In computing any period of time set forth in this part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal legal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* A DOE Official may grant an extension of any time period set forth in this part.

(c) *Service by mail.* Where a pleading or document is served by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document. Where a pleading or document is served by express mail, only two (2) days shall be added.

### § 820.7 Questions of policy or law.

(a) *Certification.* There shall be no interlocutory appeal from any ruling order, or action decision of a DOE Official except as permitted by this section. A Presiding Officer in an enforcement adjudication may certify, in his discretion, a question to the Secretary,

when the order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion, and either an immediate decision will materially advance the ultimate termination of the proceeding, or subsequent review will be inadequate or ineffective.

(b) *Decision.* The certified question shall be decided as soon as practicable. If the Secretary determines that the question was improvidently certified, or if he takes no action within thirty days of the certification, the certification is dismissed. The Secretary may decide the question on the basis of the submission made by the Presiding Officer or may request further information from any person.

### § 820.8 Evidentiary matters.

(a) *General.* A DOE Official may obtain information or evidence for the full and complete investigation of any matter related to a DOE nuclear activity or for any decision required by this part. A DOE Official may sign, issue and serve subpoenas; administer oaths and affirmations; take sworn testimony; compel attendance of and sequester witnesses; control dissemination of any record of testimony taken pursuant to this section; subpoena and reproduce books, papers, correspondence, memoranda, contracts, agreements, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or other automated systems in possession of the subpoenaed person.

(b) *Special Report Orders.* A DOE Official may issue a Special Report Order (SRO) requiring any person involved in a DOE nuclear activity or otherwise subject to the jurisdiction of DOE to file a special report providing information relating to a DOE Nuclear Safety Requirement, the Act, or a Nuclear Statute, including but not limited to written answers to specific questions. The SRO may be in addition to any other reports required by this part.

(c) *Extension of Time.* The DOE Official who issues a subpoena or SRO pursuant to this section, for good cause shown, may extend the time prescribed for compliance with the subpoena or